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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,661	07/07/2006	Toshio Kiriama	2006_1061A	7955
513 7590 12/29/2010 WENDEROTH, LIND & PONACK, L.L.P. 1030 15th Street, N.W., Suite 400 East Washington, DC 20005-1503				
EXAMINER WILLIAMS, LEZA				
ART UNIT		PAPER NUMBER		
1789				
NOTIFICATION DATE		DELIVERY MODE		
12/29/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ddalecki@wenderoth.com  
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**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/585,661

**Applicant(s)**

KIRIYAMA ET AL.

**Examiner**

LELA S. WILLIAMS

**Art Unit**

1789

**—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —**

THE REPLY FILED 17 December 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-6.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). 11/08/2010  
13. ☐ Other: \_\_\_\_\_.

/Callie E. Shosho/  
Supervisory Patent Examiner, Art Unit 1787

/LELA S. WILLIAMS/  
Examiner, Art Unit 1789

Continuation of 3. NOTE: The amendment filed December 17, 2010 has been fully considered but has not been entered given that the amendment raises new issues that would require further consideration and search. Specifically, applicants have amended claim 1 to recite the limitations of previously presented claim 2 and 3. Such amendment narrows the scope of the claim and includes a combination of limitations that were not previously considered by the examiner. Therefore, further consideration and search would be required.

Further, it is noted that if the amendment was entered, applicant's statement of "Sugimoto only discloses the soybean protein that is precipitated in acidic region. In other words, Sugimoto neither teaches nor suggests using acid-soluble soybean protein for solution or gel containing alcohol." is not persuasive. Note that Sugimoto discloses "[s]oybean milk-containing alcoholic beverage containing fermented soybean milk, acid soybean milk or a mixture thereof, alcohol and high methoxylpectin. This beverage does not result in formation of precipitates." (Abstract). Therefore, it is clear the milk of Sugimoto is dissolved.

Regarding applicant's remarks concerning CN 1253173, applicant argues that the soybean powder is not dissolved; however, the powder is used in making a wine beverage, which makes it clear the powder is dissolved. CN 1253173 discloses a process for producing an acid-soluble soybean protein-containing solution which comprises preparing an aqueous solution of acid soluble protein (page 7, step 2) and mixing the solution with a polar solvent containing alcohol (page 8) to obtain a wine beverage which would naturally have the soybean protein in a state of dissolution. The reference does not expressly teach the protein having a solubility of 60% or more at pH 4.0 or lower; however it given that the references teaches a soluble acidic soybean protein, it is inherent, absent any clear and concise evidence to the contrary that the soybean protein of CN 1253173 will have the identical properties of that presently claimed. The reference shows the acid-soluble protein content to fall within the presently claimed range of 0.5 to 20% by weight (page 3).

Applicant's attached reference JAOS Vol. 80 no.1, has been fully considered; however note it has not been cited on IDS. The reference is not considered persuasive given that the generic disclosure in JAOS does not show that the specific soybean protein of CN 125317 would have solubility less than 60%, therefore the reference does not compare with the closest prior art.